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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/010,991 | 12/06/2001 | Krisann Misthos | KMCOR 3.0-001 | 6493 |

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| EXAMINER |
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GARRETT, ERIKA P

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| ART UNIT | PAPER NUMBER |
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3636

DATE MAILED: 03/25/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|-------------------------------|---|--|
| Office Action Summary | Application No. 10/010,991 | Applicant(s) MISTHOS ET AL. S | |
| | Examiner Erika Garrett | Art Unit 3636 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) 12-19 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-7,9 and 10 is/are rejected.
- 7) ☒ Claim(s) 8 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12/6/01 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Election/Restrictions

This application contains claims 12-19 drawn to an invention nonelected with traverse in Paper No. 10. A complete reply to the final rejection must include cancelation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) The invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3 as best understood are rejected under 35 U.S.C. 102(b) as being anticipated by White (4,518,203). In regards to claim 1, White discloses the use of a substantially horizontal seat (10,figure 5) including at least two seating portions (16,18) and having a top side and a underside; a back (14) extending substantially vertically from the seat and having a first side and a second side; at least two pivotal members (figures 5-7), each corresponding to the seating portion and having a upper & lower end, wherein seat pivotal members pivots (figures 5-7) between a substantially horizontal position adjacent to the top side of the seat and a substantially vertical position adjacent to the first side of the back; a support (32,figures 4-6) extending from the underside of the seat . In regards to claim 2, at least two pairs of attachment mechanisms (26,30,34), corresponds to the seating position, one attachment

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mechanism located on the first side of the back and the other attachment is located on the pivot member. In regards to claim 3, at least two flip members, each flip member being attached to the back at a corresponding seating position and being movable from position adjacent to the second side of the seat back to a position adjacent to the first side of the back.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4-7 and 9-10 as best understood are rejected under 35 U.S.C. 103(a) as being unpatentable over White in view of Subotic (6,145,931). In regards to claims 4-5, White reveals all the claimed elements but fails to show the use of two foot rests slidably mounted underside of the seat. Subotic teaches the use of two foot rests (30&44) slidably mounted underside of the seat. It would have been obvious to one of ordinary skill in the art at the time of invention to modify a seat with two foot rests slidably mounted under the seat as taught by Subotic in order to give the occupant more support.

Claims 6-7 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over White in view of Graff (4,053,129). White shows the use of all the claimed invention but fails to show the use of a plurality of armrests located on the interior end of the seating position and legs having wheels (27,28,29) at the end. Graff teaches the

use of armrests located on the interior end of the seating position and legs having wheels at the end. It would have been obvious to one of ordinary skill in the art at the time of invention to modify the seat with armrest and legs with wheels as taught by Graff, in order to provide the occupant with arm support and be able to move around.

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over White in view of Shields (4,470,630). White shows the use of all the claimed invention but fails to show the use of sheet material connecting to the seat to allow pivotal movement. Shields teach the use of sheet material (40) connecting to the seat to allow pivotal movement. It would have been obvious to one of ordinary skill in the art at the time of invention to modify sheet material connecting to the seat to allow pivotal movement as taught by Shields, in order to give the seat more support.

Allowable Subject Matter

Claim 8 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments filed 12/4/03 have been fully considered but they are not persuasive.

In response to the applicant's argument that White, fails to show "a back and seat", the applicant is directed to the above rejection. The examiner is of the opinion

that White does disclose a back and a seat and the seat cushion shows it's supports itself in figures 5-7.

In response to applicant's argument that "*White does not disclose at least two seat portions*", a recitation of the intended use of the claimed invention must result in a **structural difference** between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. **If the prior art structure is capable of performing the intended use, then it meets the claim.** The examiner is of the opinion that the cushions is capable of in fact of performing the use of two seat portions especially for persons of small stature i.e., children and petite persons. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

Conclusion


THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Erika Garrett whose telephone number is 703-605-0758.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

EG
March 22, 2004


Peter M. Cuomo
Supervisory Patent Examiner
Technology Center 3600